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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/526,143 | 02/28/2005 | Grant Stuart Richardson | 41577/312175 | 2535 |

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EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

03/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/526,143

Applicant(s)

RICHARDSON ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12 and 14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Annette F Dixon/
Examiner, Art Unit 3771

Continuation of 11, does NOT place the application in condition for allowance because: Applicant asserts the prior art made of record does not disclose or teach: 1) a face mask having, "a first sealing means configured to form a seal on the face of a user surrounding an area of the user's face comprising the eyes, mouth, and nose", 2) the cooperation of the valve system and second cavity (4), and 3) a third sealing portion as required by claim 8. Examiner respectfully disagrees with Applicant's assertions. Regarding the first assertion, as shown in Figure 2, the first sealing means is seal 6. The seal (6) attaches on the brow of the user and extends to the frontal portion of the chin to define a sealed cavity that "surrounds...the eyes, mouth and nose" of the user. As addressed by Cronjaeger this seal (6) provides a chamber (7) between the seal (6) and the half mask (2), whereby seal penetration can be monitored (Column 3, Lines 40-46). As shown in the aforementioned figure this seal (6) and chamber (7) extends from the brow of the user, above the eyes, and around the face of the user to the frontal portion of the chin, below the mouth. Regarding the second assertion, as shown in Figure 2, the valve (9) cooperatively cooperates with the flap (8) thereby resulting in fluid communication with the second cavity (4). As addressed, the second cavity (4) is defined by the space between the first seal (6) and the second seal (11). As described above, the first seal extends from the brow of the user, above the eyes, and around the face of the user to the frontal portion of the chin, below the mouth. The second seal extends from above the first seal, encompassing the forehead, and extends around the face to below the jaw of the user. (Figure 2). As shown in Figure 2, a valve (9) is present within the defined second cavity (4) region (Column 4, Lines 35-50). During inhalation, the flap (8) actuates the valve (9) to an open position by which gas is applied to the second cavity (4). Regarding the third assertion, Cronjaeger discloses a third sealing element, defined by the half mask (2) sealing edge engaging solely the mouth and nose of the user. (Figure 2 and Column 3, Lines 66-68). Therefore, inApplicant asserts the prior art made of record does not disclose or teach: 1) a face mask having, "a first sealing means configured to form a seal on the face of a user surrounding an area of the user's face comprising the eyes, mouth, and nose", 2) the cooperation of the valve system and second cavity (4), and 3) a third sealing portion as required by claim 8. Examiner respectfully disagrees with Applicant's assertions. Regarding the first assertion, as shown in Figure 2, the first sealing means is seal 6. The seal (6) attaches on the brow of the user and extends to the frontal portion of the chin to define a sealed cavity that "surrounds...the eyes, mouth and nose" of the user. As addressed by Cronjaeger this seal (6) provides a chamber (7) between the seal (6) and the half mask (2), whereby seal penetration can be monitored (Column 3, Lines 40-46). As shown in the aforementioned figure this seal (6) and chamber (7) extends from the brow of the user, above the eyes, and around the face of the user to the frontal portion of the chin, below the mouth. Regarding the second assertion, as shown in Figure 2, the valve (9) cooperatively cooperates with the flap (8) thereby resulting in fluid communication with the second cavity (4). As addressed, the second cavity (4) is defined by the space between the first seal (6) and the second seal (11). As described above, the first seal extends from the brow of the user, above the eyes, and around the face of the user to the frontal portion of the chin, below the mouth. The second seal extends from above the first seal, encompassing the forehead, and extends around the face to below the jaw of the user. (Figure 2). As shown in Figure 2, a valve (9) is present within the defined second cavity (4) region (Column 4, Lines 35-50). During inhalation, the flap (8) actuates the valve (9) to an open position by which gas is applied to the second cavity (4). Regarding the third assertion, Cronjaeger discloses a third sealing element, defined by the half mask (2) sealing edge engaging solely the mouth and nose of the user. (Figure 2 and Column 3, Lines 66-68). Therefore, it light of the aforementioned reasoning the rejection of the claims has been maintained. light of the aforementioned reasoning the rejection of the claims has been maintained..